IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.5612 OF 2005
IN
FIRST APPEAL NO.2502 OF 2005

The State of Maharashtra ...Applicant
Vs.
Shri Krushna Hasha Gowari & Ors. ...Respondents

Mr K.K. Tated, A.G.P. for the Applicant.
Mr S.G. Surana for the Respondents.

CORAM : A. S. OKA, J.
DATE : MARCH 09, 2006.

P.C.:

1. Rule. Shri Surana waives service for the Respondents. Taken up for hearing forthwith.

2. The impugned Judgment and Award in this Application is passed in a reference under Section 28A(3) of the Land Acquisition Act, 1894. Shri Tated, learned A.G.P. for the State submitted that even if this Court is inclined to direct the Applicant-State to deposit the entire amount due and payable under the Award as a condition for grant of stay, the claimants should not be permitted to withdraw the same. He pointed out a decision of the Division Bench of this Court in First Appeal No.710 of 1989 and First Appeal No.1063 of 1989 dated 22nd September, 2005. He submitted that in view of the law laid down by this Court in the said decision, the claimant was not entitled to claim any amount over and above the amount

claimed in reply to the notice under section 9 of the said Act of 1894. He submitted that in the present case, compensation has been awarded in excess of the claim made under section 9 of the said Act of 1894. Shri Surana opposed the said prayer by submitting that the decision of this Court relied upon by Shri Tated is delivered in an Appeal arising out of a reference under section 18 of the Land Acquisition Act, 1894.

3. I have considered the submissions. The impugned Award has been passed in a reference under section 28A(3) of the said Act of 1894. Section 28(1) of the said Act gives a right to a claimant to apply for enhancement on the basis of Award made under section 18 of the said Act of 1894 in case of another land which is covered by the same notification under Section 4 of the said Act of 1894. The said right is available notwithstanding the fact that the concerned claimant has accepted the Award made under section 11 of the said Act of 1894 by the Land Acquisition Officer without any protest. Remedy under section 28 of the said Act is available even if the concerned claimant has not availed of the remedy under section 18 of the said Act of 1894. Therefore, prima facie, there is a doubt whether the decision of the Division Bench relied upon by Shri Tated will apply to the facts of the case as impugned Award has been made in a

reference under section 28A(3). Therefore, no departure can be made from a normal rule of granting stay subject to deposit of the amount payable under the impugned Award. In my view, Applicant-State can be adequately protected by permitting the original claimant to withdraw 50% amount by furnishing security to the satisfaction of the reference Court and 50% amount by furnishing bank guarantee of any nationalised bank to the satisfaction of the reference Court.

4. Hence, Civil Application is disposed of by passing following order:

(i) There will be interim stay in terms of prayer clause (b), subject to condition that the Applicant/Appellant will deposit the entire amount due and payable under the impugned Judgment and Award with the reference Court within a period of twelve weeks from today.

(ii) If the amount is not deposited within the stipulated time, interim stay granted will stand vacated automatically without reference to this Court.

(iii) If the amount is deposited, the original

claimants in the reference will be permitted to withdraw 50% of the amount subject to furnishing security to the satisfaction of the reference Court. The original claimant will be permitted to withdraw remaining 50% of the amount by furnishing bank guarantee of any nationalised bank to the satisfaction of the reference Court. Before accepting the security and/or bank guarantee furnished by the original claimants, the reference Court will hear the Applicants.

(iv) There will be no orders as to costs.

JUDGE